

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



August 11, 2004

Agenda ID #3824
Quasi-Legislative

TO: PARTIES OF RECORD IN RULEMAKING 98-07-038

This is the draft decision of Administrative Law Judge (ALJ) Kotz. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's Rules of Practice and Procedure (Rules). These rules are accessible on the Commission's Website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

Decision **DRAFT DECISION OF ALJ KOTZ** (Mailed 8/11/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking for purposes of revising General Order 96-A regarding informal filings at the Commission.

Rulemaking 98-07-038
(Filed July 23, 1998)

**THIRD INTERIM OPINION ADOPTING CERTAIN REQUIREMENTS
REGARDING ADVICE LETTER FILING, SERVICE,
SUSPENSION, AND DISPOSITION****1. Summary**

In today's decision, we adopt another part of the previously proposed revisions to General Order (GO) 96-A, which comprehensively governs utility tariffs (including their content, form, and publication, and the advice letters by which they are amended).¹ The rules revisions adopted today (which will eventually be codified in GO 96-B) are set forth in the Appendix; they chiefly concern the authority we are delegating to our staff to suspend the effectiveness of an advice letter that might otherwise take effect by operation of law 30 days

¹ In prior interim opinions (Decision (D.) 01-07-026 and D.02-01-038) in this rulemaking, we adopted rules governing (1) use of the Internet to publish tariffs, (2) representations by a utility regarding any of that utility's tariffed services, and (3) notice that a telecommunications utility must provide affected customers when it proposes a rate increase, a withdrawal of service, or certain kinds of transfers. The intense review of advice letter procedures in this rulemaking also brought to light an unintended distinction between different types of local exchange carriers when entering into customer-specific contracts. By D.01-11-059, we modified the contract filing procedure established in D.94-09-065 so as to apply that procedure uniformly to all local exchange carriers.

after filing. We also adopt certain requirements to facilitate advice letter review, such as use of the Internet for service of advice letters and related documents.

We intend to adopt and implement these rules revisions now, for advice letters filed on or after September 1, 2004, but without waiting for adoption of GO 96-B as a whole. As with our prior interim opinions (see footnote 1), we believe adoption and implementation of these rules revisions will benefit consumers, and should not be delayed.²

2. Procedural Matters

As relevant to today's decision, we have received several rounds of comments on our original proposals, set forth in the order instituting this rulemaking. Then, on February 14, 2001, the assigned Administrative Law Judge (ALJ) issued a draft decision (the "2001 Draft") in which the ALJ invited comment on extensive revisions to the originally proposed GO 96-B. Following these comments and replies, further comments were invited on specific aspects of the Telecommunications Industry Rules. We continue to consider the various Industry Rules and the General Rules that complement the planned tier structure for advice letter review in the respective utility industries. Meanwhile, today's decision not only puts in place another part of the necessary groundwork for final adoption of GO 96-B, but also improves the handling of advice letters under current practice.

² Until we take final action on GO 96-B, the requirements adopted today will be treated as an Appendix to GO 96-A, as we did with the rules adopted in D.01-07-026 and D.02-01-038. The various interim rules will be published at the Commission's Internet site together with the rest of GO 96-A.

3. Discussion

All of the rules we adopt today are based on the 2001 Draft. In fact, many of the rules are identical in substance to proposed rules (albeit numbered differently) in the 2001 Draft; where we have further revised our proposals, these revisions often resulted directly from comments on the 2001 Draft. Our discussion follows the order of the rules as set forth in the Appendix.

3.1 Rules 1—1.2 (Applicability; Code of Ethics; Computation of Time)³

These rules are not controversial, but they address several points that are not always clear under current practice. For example, Rule 1.2 states that a filing deadline is extended to the next business day if the last day for performing an act does not fall on a business day. This explicit statement should avoid unnecessary inquiries and requests for extension of time.

Rule 1 distinguishes advice letters from formal proceedings before the Commission, such as an application. Because advice letters never involve evidentiary hearings, any matter involving such hearings is excluded from coverage under these rules. Finally, we note that although GO 96-B will cover periodic and occasional utility reports (“information-only filings”) as well as advice letters, these reports are beyond the scope of the rules adopted today.

³ Rules 1—1.2 are drawn without substantive change from General Rules 1.1, 1.5, 2, and various definitions under General Rule 3 in the 2001 Draft.

3.2 Rules 2—2.2 (Cover Sheet, Form, and Content of Advice Letters)⁴

These rules are intended to remove guesswork for those who have the job of preparing or reviewing advice letters. The “cover sheet” (Rule 2.1) concisely summarizes all critical information about a given advice letter. The content requirements help ensure that the advice letter is complete and easy to review, and limit the need for information requests after the advice letter is submitted. We are currently receiving almost 5000 advice letters per year, a volume that represents an increase of well over 1000 per year since this proceeding began. With so many advice letters to deal with, under the severe time constraints we discuss later, both our staff and third parties must be able to analyze advice letters rapidly. Rules 2.1 and 2.2 provide important tools to that end.

We have revised the 2001 Draft versions of these rules to remove references to other rules not adopted at this time. We have also made several of the content requirements more specific, again with the intent of enabling the utility to easily assemble all the information it needs to submit, and enabling reviewers to easily determine whether all needed information was submitted. Through these means, the routine advice letters (the vast majority) can be processed with a minimum of fuss, and the few problematic advice letters can be readily identified.

⁴ Rules 2—2.2 are drawn with minor revisions (discussed in the text) from General Rules 5.5 and 5.6 in the 2001 Draft.

3.3 Rules 3—3.4 (Advice Letter Service Lists, Service by Internet, Filing and Serving Advice Letters and Related Documents)⁵

These rules enable utilities to distribute their advice letters effectively and efficiently. They also enable persons interested in particular utilities or particular subjects to obtain relevant advice letters easily. The rules provide for maximum reliance on service by Internet: Persons desiring such service need only provide the utility with their e-mail address when they ask to be included on an advice letter service list. A person receiving an advice letter by e-mail commits in turn to serve that person's protest or response to the advice letter by e-mail on the utility submitting the advice letter.

As compared to the 2001 Draft, the rules adopted today rely to a far greater extent on the Internet for service of advice letters and related documents. Thus, persons on the utilities' advice letter service lists will be able to receive an advice letter on the same day that it is received by the reviewing Industry Division. Of course, those persons who for any reason do not want to receive advice letters electronically may choose to receive them by regular mail.

Another significant change concerns the date of filing, from which various other important dates, such as the deadline for protests, is determined. Under the 2001 Draft, the date of filing was defined as the date when report of the advice letter appeared in the Commission's Daily Calendar. While generally that report would appear within one or two business days of the reviewing Industry Division's receipt of the advice letter, delays of a week or more

⁵ Rules 3—3.4 are drawn from General Rules 3.2, 4.3, 4.4, 5.4, 7.1, and 7.2 of the 2001 Draft. Most provisions are substantively unchanged; the major revisions are discussed in the text.

sometimes occur. Such indeterminacy creates problems both for utilities (who must take steps to implement any actions proposed in an advice letter), customers (who might be planning service changes on the basis of an advice letter), and anyone who might want to protest or otherwise respond to an advice letter. Under the rules adopted today, an advice letter is deemed filed on the date that the reviewing Industry Division receives the advice letter. The new definition eliminates the indeterminacy in relying on the Daily Calendar. Moreover, since a utility must serve its advice letter on or before the date that it submits the advice letter to the reviewing Industry Division, and since our rules entitle “any person” to request inclusion on a utility’s service list, we think the Daily Calendar should not be treated as the primary means for obtaining notice of an advice letter. Nevertheless, the Daily Calendar will continue to note the “deemed filed” date of all advice letters submitted to the Industry Divisions.

These rules do not provide at this time for Internet filing of advice letters and related documents with the reviewing Industry Division. Because of the critical importance of maintaining the accuracy and completeness of Commission records, and the sheer volume of advice letter-related documents submitted to Industry Divisions, the implementation of Internet filing is more complex than accepting service by Internet. Consequently, we have authorized the Industry Divisions to explore implementation issues with the utilities in the respective industries. (See Resolution M-4809 (June 19, 2003).) Under this resolution, the Telecommunications Division has conducted a pilot program and is currently using CD-ROMs for advice letter submittal and storage; the Telecommunications Division also accepts protests sent either by letter or e-mail. (See Resolution T-16807 (December 5, 2003).) We expect and encourage all the Industry Divisions to conduct workshops, pilot programs, and other cooperative

efforts to enable a smooth and orderly transition from the current paper filing system to increased reliance on the Internet and electronic storage media. Consistent with this general approach and with Resolution M-4809, Rule 3.3 authorizes the Executive Director to develop procedures for electronic filing.

3.4 Rules 4—4.8 (Advice Letter Review and Disposition)⁶

These rules enable most advice letters to be deemed approved and to go into effect within 30 days of filing. They also authorize the reviewing Industry Division to approve or reject any advice letter for which the approval or rejection (“disposition”) would be ministerial. Because advice letters, by design, generally concern matters that are not expected to raise factual or policy issues, we expect the large majority of advice letters will be subject to Industry Division disposition.

Some advice letters are problematic. For example, material factual issues may surface as the result of protests or staff review. Alternatively or additionally, protests or staff review may disclose an underlying disagreement regarding the proper interpretation of a statute or Commission order relevant to the advice letter. In these instances, a Commission order will sometimes be necessary to resolve the merits of the controversy. Advice letters, being informal, are generally ill-suited to resolving material factual issues; further, the interpretation of a statute or Commission order generally requires an exercise of

⁶ Rules 4-4.8 are drawn from General Rules 3.2, 3.5, 3.11, 3.12, 3.13, 4.3, 4.4, 7.4, 7.4.1, 7.4.2, 7.4.3, 7.5, 7.5.1, 7.5.2, 7.6, 7.6.1, and 7.6.2 of the 2001 Draft. Many provisions are substantively unchanged; the major revisions are discussed in the text.

discretion by the Commission itself.⁷ Consequently, these rules must address in detail the situation where problems arise that cannot be readily resolved, even though that situation occurs only in the small minority of advice letters.

Problematic advice letters follow two basic procedural paths. First are those advice letters that are resolved without reaching the merits. For example, where the reviewing Industry Division finds that an advice letter raises material factual issues requiring evidentiary hearing, the Industry Division will reject the advice letter without prejudice. Similarly, if the reviewing Industry Division believes the action proposed in the advice letter is one that the Commission must consider in a formal proceeding, the Industry Division will reject the advice letter without prejudice.⁸ In both these circumstances, the utility itself may choose to withdraw the problematic advice letter. Whether the advice letter is rejected without prejudice or withdrawn, the utility has the option of filing an application or filing a new advice letter with modifications intended to remove the objections to the prior advice letter.

Second are those advice letters whose merits are addressed by the Commission. When the Commission considers the disposition of an advice

⁷ The bare fact of controversy does not preclude Industry Division disposition. Informal means are sometimes successful in clearing up factual issues, and the reviewing Industry Division may always reject factual or legal arguments that are clearly erroneous.

⁸ For example, historically, and under the Public Utilities Code, most requests for approval of a rate increase had to be presented by formal application and a proper showing at an evidentiary hearing. There are currently exceptions to this rule, notably for many telecommunications carriers and smaller water and sewer system utilities, but the energy utilities, large water utilities, and some local exchange carriers are still required to apply for rate increases.

letter, it does so by resolution. For these advice letters, the reviewing Industry Division prepares a proposed resolution and circulates it for public review and comment, as provided by Pub. Util. Code § 311(g)(1) and Rule 77.7 of our Rules of Practice and Procedure.

Dealing with a problematic advice letter under either procedural path will generally require more than the 30 days provided in the initial review period. During that time, the reviewing Industry Division must analyze the advice letter and any protests (which are not due until the 20th day of the initial review period). In such a compressed timeframe, the reviewer is hard-pressed simply to determine that there are significant problems with an advice letter, much less for the reviewer to prepare and issue a written disposition and for the utility and protestants to review and comment on that disposition.⁹ However, the reviewing Industry Division must take some action in the initial review period because otherwise, under Pub. Util. Code § 455, the utility may put the advice letter into effect 30 days after filing.

When this situation arose in the past, it was dealt with mostly by informal agreement between the utility and the reviewing Commission staff that the utility would not put the advice letter into effect while the advice letter was under active review. Rarely, the Commission would order a formal “investigation and suspension” of the advice letter, pursuant to § 455.

The new rules are not intended to replace informal agreements, which staff and utilities may continue to enter into, in lieu of suspension. However, the

⁹ Advice letters also arrive in droves: 2-3 dozen per month submitted for review to the Energy and Water Divisions, 2-3 hundred per month submitted for review to the Telecommunications Division.

historic practice described above originated when the annual volume of advice letters numbered in the hundreds rather than the thousands. The new rules update and augment historic practice to better deal with current conditions. There are two fundamental improvements, both of which are keyed to the 30-day initial review period: “deemed” approval of advice letters that are not problematic; and staff authority to suspend the effectiveness of advice letters that are problematic.

In brief, we have delegated to the reviewing Industry Division the authority, pursuant to § 455, to suspend the effectiveness of an advice letter for up to 120 days past the 30-day initial review period, in order for the division to complete its review and prepare and issue an appropriate disposition. On the other hand, any advice letter that is not protested or suspended will be deemed approved at the end of the initial review period.

These two innovations will improve the effectiveness of advice letter review while increasing the efficiency of that review. Utilities will have the assurance of regulatory approval, within the 30 days contemplated by Pub. Util. Code § 455, for those advice letters (much the majority, we believe) that raise no significant issues. The problematic advice letters will be designated quickly and reasons for the suspension set forth in the suspension letter. We intend by these means to minimize uncertainty, avoid misunderstanding, and ensure timely disposition of even problematic advice letters.¹⁰

¹⁰ The divisions that review advice letters currently have an internal goal of 90 days from filing within which to process and close them. Given the sheer volume of advice letters, the divisions have done very well in terms of meeting their goal. For example, out of a total of 3,442 advice letters submitted to the Telecommunications Division so far this year, 114 (or one out of 30) were open and pending for more than 90 days as of

Footnote continued on next page

The rule that we adopt to implement “deemed” approval of advice letters is substantively unchanged from the 2001 Draft. Regarding suspensions by our staff, we already have considerable experience as we authorized this procedure on an interim basis by Resolution M-4801 (April 19, 2001), modified and affirmed as modified by D.02-02-049. We made the interim procedure subject to further modification by order in this proceeding, and we do so today.

Specifically, we limit the delegated suspension authority to a single suspension, namely, the period of up to 120 days expressly provided by Pub. Util. Code § 455. That statute also provides for “a further period [of suspension] not exceeding six months,” but we reserve to the Commission itself the power to impose this “further period.”¹¹ We make this change because we think that, generally speaking, five months (the initial review period plus a suspension of up to 120 days) is a reasonable amount of time for the reviewing Industry Division to prepare a proposed disposition.

November 10, 2003. We plan to further improve the timeliness of advice letter disposition, and today’s decision will provide the reviewing Industry Divisions with important tools to that end.

¹¹ In other words, § 455 authorizes suspensions of 120 and 180 days, to run consecutively from the expiration of what we call the initial review period, i.e., the first 30 days following the filing of an advice letter. Thus, under the statute, the Commission has up to 330 days to process an advice letter. Under the rules we adopt today, however, we intend to have an actual or pending disposition of virtually every advice letter within 150 days of filing. While we retain the authority under § 455 to order a “further period” of suspension, we intend to exercise that authority only when it appears the additional suspension will be the most expeditious way to resolve the advice letter on the merits. However, if our deliberation on a resolution prepared by the Industry Division extends beyond 150 days after filing of the advice letter, the suspension is automatically extended for a further period until we act on the resolution.

One disposition option open to the division is to propose a further period of suspension if there is good reason to believe that further consideration of the advice letter will lead expeditiously to a clear approval or rejection on the merits. However, we think the more likely conclusion, where material issues raised by an advice letter remain in doubt after five months, is that the action proposed by the advice letter requires review in a formal proceeding, possibly with an evidentiary hearing. In that situation, a rejection without prejudice is preferable to continued suspension.

We have also refined the rules in the 2001 Draft by directing the reviewing Industry Division to publish an advice letter suspension status report at the Commission's Internet site. The report will reflect new suspensions, changes in status of currently suspended advice letters, and other pertinent information.

3.5 Rules 5—6 (Reconsideration, Appeal, Modification, Extension of Time to Comply With Advice Letter Disposition)¹²

These rules concern events following Industry Division or Commission disposition of an advice letter. As with a decision on a formal matter, the disposition of an advice letter may be appealed. The appeal of an Industry Division disposition is by request for reconsideration to the division's Director. The ruling on a request may be appealed to the Commission, which will act on the appeal by resolution. Where the original disposition of an advice letter was by Commission resolution, the appeal is by application for rehearing.

¹² Rules 5—6 are drawn with minor revisions (discussed in the text) from General Rules 7.7—7.8 in the 2001 Draft.

Generally, the appellant of an advice letter disposition would be the utility or a protestant; third parties who had notice and an opportunity to participate in review of the advice letter normally should not be allowed to voice objections for the first time on appeal that they could have made earlier. There are exceptions, however, where third parties either lacked notice or had no reason to participate earlier (for example, if they supported the advice letter as written but the advice letter was rejected or approved conditionally). The rules allow third party appeals where the third party is able to show an interest in the advice letter and to explain why the third party should be entitled to appeal. Third party challenges will be summarily rejected if entitlement to appeal is not demonstrated.

Under the 2001 Draft, an appeal or answer to an appeal had to be served on persons submitting either a protest or response to the advice letter.¹³ The rules adopted today require service only on protestants. The person submitting a response, however, may be able to appeal as an interested third party upon a proper showing, as discussed above.

The rules also contain procedures for petitioning to modify a resolution on an advice letter or for requesting an extension of time to comply with such a resolution. The procedures generally mirror those for modifying or requesting an extension in regard to a decision in a formal proceeding.

¹³ A “response” to an advice letter differs from a protest in that a response does not object to the relief requested in the advice letter. (See Rule 4.2.)

4. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

5. Assignment of Proceeding

This proceeding is assigned to Commissioner Susan P. Kennedy and ALJ Steven Kotz.

Findings of Fact

1. Advice letters never involve evidentiary hearings.
2. A “cover sheet” that concisely summarizes all critical information about a given advice letter will help ensure that the advice letter is complete and easy to review, and limit the need for information requests after the advice letter is submitted.
3. The Commission is currently receiving almost 5000 advice letters per year; thus, both Commission staff and third parties must be able to analyze advice letters rapidly.
4. Greater utilization of the Internet for notice and service of documents will enable persons interested in particular utilities or particular subjects to obtain relevant advice letters easily.
5. Indeterminacy regarding the date of filing creates problems both for utilities (who must take steps to implement any actions proposed in an advice letter), customers (who might be planning service changes on the basis of an advice letter), and anyone who might want to protest or otherwise respond to an advice letter.

6. Because advice letters, by design, generally concern matters that are not expected to raise factual or policy issues, the large majority of advice letters will be subject to Industry Division disposition.

7. Advice letters, being informal, are generally ill-suited to resolving material factual issues; further, the interpretation of a statute or Commission order generally requires an exercise of discretion by the Commission itself.

8. Dealing with a problematic advice letter will generally require more than the 30 days provided in the initial review period. Delegating authority to Commission staff to suspend the effectiveness of a problematic advice letter for no more than 120 days beyond the initial review period is reasonable in order to allow sufficient time for the reviewing Industry Division to prepare an appropriate disposition.

9. Generally, the appellant of an advice letter disposition would be the utility or a protestant; third parties who had notice and an opportunity to participate in review of the advice letter normally should not be allowed to voice objections for the first time on appeal.

Conclusions of Law

1. The reviewing Industry Division may approve or reject any advice letter for which the approval or rejection would be ministerial.

2. The reviewing Industry Division may reject factual or legal arguments that are clearly erroneous.

3. Whether an advice letter is rejected without prejudice or withdrawn, the utility has the option of filing an application or filing a new advice letter with modifications intended to remove the objections to the prior advice letter.

4. The Commission may delegate to the reviewing Industry Division the authority, pursuant to Pub. Util. Code § 455, to suspend the effectiveness of an advice letter.

5. Regarding suspensions by staff, the interim procedure authorized in Resolution M-4801 was subject to further modification by order in this proceeding. Today's order modifies Resolution M-4801 by limiting the delegated suspension authority to a single suspension, namely, the period of up to 120 days expressly provided by Pub. Util. Code § 455. The suspension period begins immediately after the 30-day initial review period.

6. Under Pub. Util. Code § 455, the Commission has up to 330 days to process an advice letter.

7. If the Commission's deliberation on a resolution prepared by the Industry Division extends beyond 150 days after filing of the advice letter, the suspension should be automatically extended for a further period until the Commission acts on the resolution.

8. Third party challenges to the disposition of an advice letter should be summarily rejected if entitlement to appeal is not demonstrated.

THIRD INTERIM ORDER

IT IS ORDERED that:

1. The rules set forth in the Appendix (Rules) to this Third Interim Opinion are adopted.
2. The Rules shall apply to all advice letters filed on or after September 1, 2004.
3. This proceeding remains open to deliberate upon final adoption of General Order 96-B, apart from these Rules and those adopted in Decision 01-07-026 and Decision 02-01-038.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Advice Letter Filing, Service, Suspension, and Disposition

1. Applicability

As used in the following rules, “utility” means a public utility that is a gas, electric, telephone, water, sewer system, pipeline, or heat corporation, as defined in the California Public Utilities Code, “Industry Division” means the Energy, Telecommunications, or Water Division, or their successors, and “advice letter” means an informal request by a utility for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect.

These rules apply to advice letters. The primary use of an advice letter is to transmit tariff sheet changes. An advice letter may be used for other purposes only to the extent authorized by statute or Commission order.

These rules do not apply to an information-only filing, such as a report, that is submitted by a utility to the Commission pursuant to statute or Commission order but that is not submitted in connection with a request for Commission approval, authorization, or other relief. These rules also do not apply to any matter requiring an evidentiary hearing or to a formal proceeding, whether initiated by application, complaint, petition, order instituting investigation or rulemaking, or order to show cause.

1.1 Code of Ethics

Rule 1 (“Code of Ethics”) of the Commission’s Rules of Practice and Procedure (California Code of Regulations, Title 20, Division 1, Chapter 1) shall apply to all matters governed by these rules.

1.2 Computation of Time

As used in these rules, “day” means a calendar day, and “business day” means a calendar day except for Saturdays, Sundays, and weekdays when the Commission’s offices are closed, due either to a State holiday or to an unscheduled closure (e.g., an emergency or natural disaster). The Commission’s Internet site (www.cpuc.ca.gov, under “About CPUC”) will maintain a list of

State holidays for the current calendar year and a list for the following calendar year as soon as that list is available.

When these rules set a time limit for performance of an act, the time is computed by excluding the first day (i.e., the day of the act or event from which the designated time begins to run) and including the last day. If the last day does not fall on a business day, the time limit is extended to include the first business day thereafter.

2. Advice Letter Contents

2.1 Cover Sheet

A utility submitting an advice letter for filing shall include with its advice letter a cover sheet, which shall state the date when the utility served the advice letter and submitted it for filing to the reviewing Industry Division. The cover sheet shall also be served with the advice letter. The cover sheet shall state that a protest or response to the advice letter must be submitted to the reviewing Industry Division within 20 days of the date of filing and served on the same day on the utility. The cover letter shall summarize the contents of the advice letter, as follows:

- (1) indicate requested effective date;
- (2) indicate service affected by the advice letter;
- (3) indicate category of affected service (where applicable);
- (4) briefly describe change to existing service (where applicable) or other change proposed by the advice letter;
- (5) indicate percent impact of proposed change on current rates or charges for affected service (where applicable);
- (6) cite Commission orders (by decision or resolution number and ordering paragraph) and Public Utilities Code or other statutory provisions (by section) related to the substance of the advice letter, and identify as compliance filing (where applicable);
- (7) refer to the utility's other pending advice letters that relate to the same tariffs or are otherwise affected by the proposed change;

- (8) if the advice letter replaces a withdrawn or rejected advice letter, identify the prior advice letter and the differences between it and the new advice letter;
- (9) indicate whether the utility believes disposition of the advice letter by Commission resolution is necessary or appropriate;
- (10) show contact person, telephone number, and e-mail address for additional information regarding the advice letter; and
- (11) show postal address and e-mail address of the utility and of the reviewing Industry Division for protests regarding the advice letter.

If an advice letter does not include a complete cover sheet, as described above, the reviewing Industry Division may decline to accept the advice letter for filing unless and until the utility submitting the advice letter submits and serves the information that is missing or incomplete.

2.2 Form and Content

A utility shall include additional discussion, as needed, of any aspect of the advice letter summarized in the cover sheet. The utility shall also:

- (1) number the advice letter sequentially, beginning with No. 1 for the first advice letter submitted by the utility for each type of service rendered, followed by a letter designation for the type of service if the Industry Division so requires;
- (2) attach the tariff sheets (new, revised, or canceled) showing the changes that would be made by the advice letter, and list the numbers and titles of the new tariff sheets (if any) and the numbers of tariff sheets proposed to be canceled (if any). If the advice letter proposes to change tariff sheets currently in effect, the proposed changes shall be shown by providing either (i) a redlined version of the tariff sheets, or (ii) the tariff sheets as currently in effect and as proposed with the changes indicated by appropriate symbols along the right-hand margin, using the symbols set forth in the utility's preliminary statement. If the reviewing Industry Division will assign sheet numbers, so indicate. A tariff sheet number may not be used more than once;

- (3) state whether any deviations or conflicts would be created, service withdrawn from any present customer, or more or less restrictive conditions imposed;
- (4) if establishing a new service, describe the new service and state its impacts (if any) on rates and service to customers not receiving the new service, its impacts (if any) on customer privacy and competitive markets, any educational efforts the utility plans in connection with the new service, and any transactions with the utility's affiliates in the provision of the new service;
- (5) if seeking approval of a contract or other deviation from tariffed service, attach a copy;
- (6) attach analysis and workpapers used to justify the relief sought in the advice letter;
- (7) cite the statute and/or Commission order establishing the notice requirements applicable to the advice letter, and describe how those requirements were satisfied; and
- (8) attach the service list to the original advice letter submitted to the reviewing Industry Division, or if the list is identical to a list used previously by the utility, cite the number and date of the advice letter or application that is the source of the list.

If an advice letter requests change to a Commission resolution addressing a prior advice letter of the utility, the new advice letter shall specify the resolution to which a change is requested, and shall set forth the following information by way of notice:

- (1) The advice letter is subject to Public Utilities Code Section 1708, which states in pertinent part that the Commission may, "upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it."
- (2) A person wishing to request an evidentiary hearing must file and serve a timely protest to the advice letter. The protestant must expressly request and explain the need for an evidentiary hearing. The explanation must identify material disputed facts and indicate why a hearing must be held.

- (3) Any right a person may otherwise have to an evidentiary hearing will be waived if that person does not follow the above procedure for requesting one.

If an advice letter omits any applicable contents, as described above, the reviewing Industry Division may decline to accept the advice letter for filing unless and until the utility submits and serves the complete advice letter.

3. Filing and Service

3.1 Service Lists

Each utility shall maintain at least one advice letter service list, which shall include the postal and e-mail addresses, as appropriate, of all persons on the list. To the extent practical, the utility shall maintain separate lists for different types of advice letters (for example, differentiating between water utility districts, customer classes, or particular services), so that persons may request and receive only those advice letters of interest. The utility shall include on the service list any person who requests such inclusion, and may periodically confirm the desire of any currently listed person to remain on the list. On or before the date when the utility submits an advice letter for filing, it shall serve the advice letter without charge on all persons listed for that type of advice letter.

3.2 Service by Internet

For purposes of these rules, any person may accept service by Internet. A person indicates acceptance of such service by providing an e-mail address along with a postal address to the utility, Industry Division, or third party serving a document on the person. Notwithstanding such acceptance, the utility, Industry Division, or third party shall make paper service (including service by first-class mail, personal delivery, or facsimile transmission) immediately whenever service by Internet is unsuccessful.

A utility shall serve its advice letters and related documents by Internet on any person on its advice letter service list who provides an e-mail address. Any such person shall serve that person's advice letter protest and related documents by Internet on the utility submitting the advice letter.

3.3 Filing Advice Letters and Related Documents

Advice letters, protests, responses, and replies shall be submitted for filing to the reviewing Industry Division. The Executive Director may develop procedures for the electronic filing of these documents. The Industry Division will report in the Daily Calendar each such document and the date of its receipt.

The date of filing of an advice letter or related document shall be deemed to be the date of receipt by the reviewing Industry Division for purposes of calculating the 20-day protest period, the 30-day initial review period, the period of suspension under Rule 4.6, or the last day for any filing or other deadline that may be computed from the date of filing under these rules. The reviewing Industry Division may decline to file an advice letter due to defective service or omitted contents. Notwithstanding the Industry Division's acceptance of an advice letter for filing, a defect or omission that becomes apparent during review of the advice letter may require rejection of the advice letter without prejudice if the utility fails, upon request, to promptly cure the defect or omission.

Advice letters, protests, responses, and replies are public records, and are open to public inspection, except as provided under the Public Records Act and General Order 66-C (or the then-current successor to General Order 66-C). Any provision the Commission may make, now or in the future, for electronic notice of, and access to, the Commission's public records shall apply to such documents.

3.4 Serving Advice Letters and Related Documents

On or before the date an advice letter is submitted for filing, and unless otherwise directed by Commission order, the utility shall serve the advice letter and cover sheet (1) on the utility's advice letter service list, and (2) on any other third parties as specified by statute or other Commission order. Such service shall be by Internet to the extent required by Rule 3.2. In addition, the utility shall make paper service of the advice letter on the Office of Ratepayer Advocates by first-class mail or personal delivery. The requirement to serve the Office of Ratepayer Advocates does not apply to a utility that is a sewer system corporation or a Class B, C, or D water corporation.

After the submittal of an advice letter, and pending its disposition, the utility shall promptly provide a copy of the advice letter to anyone so requesting.

Such provision shall be without charge to anyone who currently receives service from the utility, or to anyone receiving the advice letter by Internet.

The following additional requirements apply to service of any advice letter that requests a change to a Commission resolution. The utility submitting such an advice letter shall serve it on anyone who filed a protest or response to the prior advice letter addressed in the resolution, any third party whose name and interest in the relief sought appeared on the face of that prior advice letter (as where the advice letter sought approval of a contract or deviation for the benefit of such third party), and any other persons who had been served with the resolution.

4. Advice Letter Review and Disposition

4.1 Protests and Responses

A protest is a document that objects in whole or in part to the relief requested in an advice letter. The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the date on which the protest was submitted to the reviewing Industry Division.

If the protestant believes that the Commission should hold an evidentiary hearing, the protest must expressly request and explain the need for an evidentiary hearing. The explanation must identify material disputed facts and indicate why a hearing must be held. Any right a protestant may otherwise have to an evidentiary hearing will be waived if the protestant does not follow this procedure for requesting one.

A response differs from a protest only in that a response does not object to the relief requested in the advice letter but provides useful information regarding the advice letter.

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter. Within 20 days of the date of filing of the advice letter, the protest or response shall be submitted to the reviewing Industry Division and served on the same day on the utility. After submitting a protest,

and pending disposition of the advice letter, the protestant shall promptly provide a copy of the protest to anyone so requesting.

4.2 Grounds for Protest

An advice letter may be protested on one or more of the following grounds:

- (1) The utility did not properly serve or give notice of the advice letter;
- (2) The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;
- (3) The analysis, calculations, or data submitted in support of the advice letter contain material errors or omissions; or
- (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding.

In general, as illustrated in the following examples, an advice letter may not be protested on the grounds that the proposed rate, charge, service, condition, or classification is unjust, unreasonable, or discriminatory. A protest on these grounds is proper only where such protest would not require relitigating a prior order of the Commission approving or authorizing such rate, charge, service, condition, or classification.

Example 1. Where the Commission has approved a rate change, an advice letter submitting tariff sheets in compliance with the Commission order approving the rate change is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.

Example 2. Where the Commission does not regulate the rates of a specific type of utility, an advice letter submitting a rate change by a utility of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.

Example 3. Where the Commission has established a rate band within which a utility is free to set rates for a specific type of service, an advice letter submitting a rate change within the band for a service of the specified type is not

subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.

In all of the above examples, the advice letters may still be protested on other grounds. For example, if the rate change in example 3 falls outside the rate band or applies to a service other than of the specified type, the advice letter would violate the Commission order approving the rate change and is subject to protest on that ground.

4.3 Replies

The utility submitting an advice letter shall reply to each protest and may reply to any response. Any such reply shall be submitted to the reviewing Industry Division within five business days after the end of the protest period, and shall be served on the same day on each person who submitted a protest or response to the advice letter.

4.4 Late-Filed Protest or Response

The reviewing Industry Division may consider a late-filed protest or response. If an Industry Division considers a late-filed protest or response, it will so notify the utility, and the utility shall have five business days from the date of issuance of the notice within which to reply to the late-filed protest or response.

4.5 Additional Information; Supplements

An Industry Division, to assist its review of an advice letter, may request additional information from the utility. The utility shall respond to the request within five days unless the Industry Division agrees to a later response, and the Industry Division may reject the advice letter if the utility does not respond promptly and fully. If the Industry Division, after considering the additional information, determines that material factual issues remain, the Industry Division will reject the advice letter without prejudice.

A utility may make minor revisions or corrections to its advice letter at any time before the requested effective date by submitting a supplement to the reviewing Industry Division. The utility shall withdraw the advice letter without prejudice in order to make major revisions or corrections. A supplement shall be submitted and served in the same manner and on the same persons as the advice letter, plus any other persons who have submitted a protest or response. A supplement shall bear the same identifying number as the advice letter but shall have a letter suffix ("A" for the first supplement, "B" for the second supplement, etc.).

Changes that generally may be made by supplement include: a correction of a typographical or other insubstantial error; a modification in response to a

protest; a withdrawal of a pending new service; a language clarification; or a later effective date.

The submission of a supplement, or of additional information at the request of the reviewing Industry Division, does not automatically continue or reopen the protest period or delay the effective date of the advice letter. The reviewing Industry Division, on its own motion or at the request of any person, may issue a notice continuing or reopening the protest period. Any new protest shall be limited to the substance of the supplement or additional information.

4.6 Initial Review Period; Suspension; Status Report

The review period for an advice letter begins on the first day after the date of filing of the advice letter. The initial review period for an advice letter is the 30 days immediately following the date of filing. No later than the last day of the initial review period, the reviewing Industry Division will notify the utility and any protestants if disposition of the advice letter will not occur within the initial review period. The Industry Division may notify the utility, and any protestant who has provided an e-mail address, by Internet.

The Industry Division's notification will suspend the advice letter's effectiveness and will state the reason for the suspension and its expected duration, which will not exceed 120 days from the end of the initial review period unless the utility agrees in writing to a longer suspension period. For any advice letter so suspended, the reviewing Industry Division will proceed promptly with the disposition of the advice letter under Rule 4.7 or Rule 4.8, as appropriate. If the reviewing Industry Division determines that a suspended advice letter requires disposition by the Commission, and the Commission's deliberation on the resolution prepared by the Industry Division extends beyond the expiration of the suspension period, the suspension is automatically extended for a further period until the Commission acts on the resolution.

Each reviewing Industry Division will publish and keep current an advice letter suspension status report at the Commission's Internet site. The report will include the following information for each currently suspended advice letter: identification of the advice letter by utility and advice letter number; date of suspension; reason(s) for suspension; and projected date of disposition. The report will be updated, as needed, to reflect new suspensions and any change of

status of a suspended advice letter, including disposition or withdrawal of the advice letter.

4.7 Industry Division Disposition

A utility shall designate in the advice letter whether the utility believes the advice letter is subject to Industry Division disposition. The utility's designation is not binding on the reviewing Industry Division.

The Commission intends by this rule to make advice letters subject to Industry Division disposition in all instances where the delegation of such authority to an Industry Division is lawful.

An advice letter is subject to disposition by the reviewing Industry Division whenever such disposition would be a ministerial act. Industry Division disposition is appropriate where statutes or Commission orders have required the action proposed in the advice letter, or have authorized the action with sufficient specificity, that the Industry Division need only determine as a technical matter whether the proposed action is within the scope of what has already been authorized by statutes or Commission orders. In addition to disposition of such advice letters, the Industry Division will reject any advice letter where the advice letter or workpapers are clearly erroneous, including without limitation where there are clear inconsistencies with statute or Commission order.

An advice letter will be subject to Industry Division disposition even though its subject matter is technically complex, so long as a technically qualified person could determine objectively whether the proposed action has been authorized by the statutes or Commission orders cited in the advice letter. Whenever such determination requires an exercise of discretion, the disposition of the advice letter on the merits will be by Commission resolution, as provided in Rule 4.8.

Notwithstanding a timely protest, the reviewing Industry Division may approve an advice letter that is subject to disposition under this rule and is otherwise proper, if the protest either (1) is not made on proper grounds as set forth in Rule 4.2, (2) may be rejected on a technical basis as discussed in this rule, or (3) is clearly erroneous.

The Industry Division will review each advice letter submitted to it, together with any timely protests, responses, and replies. If the Industry

Division, in light of such review, concludes that the advice letter is subject to disposition under this rule, the Industry Division will report its disposition at the Commission's Internet site. If the advice letter is approved, the Industry Division will either (1) notify the utility by e-mail on the Internet, or (2) return to the utility a complete copy of the advice letter with the effective date stamped on each tariff sheet.

An advice letter that the utility has properly submitted for Industry Division disposition is deemed approved if, at the end of the initial review period, the advice letter has not been protested or suspended by the reviewing Industry Division, as provided in Rule 4.6. Where the Industry Division rejects an advice letter or grants a protested advice letter, the Industry Division will issue a disposition that will state the basis for rejecting the advice letter or the protest. The Industry Division will serve the disposition on the utility and on any person submitting a protest or response to the advice letter. Service on the utility, and on any person who is entitled to receive the disposition and has provided an e-mail address, may be by Internet.

If the reviewing Industry Division has suspended an advice letter that the utility properly submitted for disposition under this rule, the Industry Division, prior to the expiration of the suspension period, will either (1) issue its disposition, or (2) prepare for the Commission's consideration and place on a Commission meeting agenda a resolution containing the Industry Division's analysis and recommendation regarding the advice letter. The Commission may adopt the resolution or modify it in whole or in part.

4.8 Disposition by Resolution

Except for those circumstances in which, as provided in Rules 2.1, 2.2, 4.5, or 4.7, the reviewing Industry Division may approve, reject, or decline to file an advice letter, the reviewing Industry Division will prepare and place on the Commission's meeting agenda a resolution approving, rejecting, or modifying any advice letter submitted to the Industry Division. The resolution will contain the Industry Division's recommended disposition and analysis supporting such disposition.

The Commission may adopt the resolution or modify it in whole or in part. After the Commission has acted on a resolution, the resolution will be served on the utility, on any person submitting a protest to the advice letter, and on any

other party to the resolution. The disposition of the advice letter will be reported at the Commission's Internet site. If the advice letter is approved, the Industry Division will either (1) notify the utility by e-mail on the Internet, or (2) return to the utility a complete copy of the advice letter with the effective date stamped on each tariff sheet.

5. Reconsideration; Appeal

5.1 Reconsideration of Industry Division Disposition

The utility submitting an advice letter or any person submitting a protest to the advice letter may request reconsideration of an Industry Division disposition. Any other person who has an interest in the advice letter but who could not submit a protest may also request reconsideration. Any such request shall explain why the person is entitled to make the request. The reconsideration will be by the Industry Division's Director or by the Director's delegate. The delegate will have had no prior involvement with review of the advice letter, either directly or through supervision of staff.

Any such request for reconsideration shall be submitted to the Industry Division within 10 days after the issuance of the written disposition, and shall be served on the same day. If the requester is the utility, it shall serve all persons submitting protests to the advice letter. If the requester is not the utility, the requester shall serve the utility and all persons submitting protests to the advice letter. No late-filed request will be entertained.

Within 10 days after the last day for submitting a request for reconsideration, the utility, any protestant, the Consumer Protection and Safety Division, or the Office of Ratepayer Advocates may submit and serve an answer to the request. No reply from the requester is allowed.

Within 40 days after the last day for submitting a request for reconsideration, the Director or the Director's delegate will issue a written ruling on reconsideration. The Industry Division will report the ruling in the Daily Calendar and will serve the ruling on the utility, the requester, and any person submitting a protest to the advice letter. Service on the utility and on anyone who has provided an e-mail address may be by Internet.

The utility, any person submitting a protest, or any person requesting reconsideration may request Commission review of the ruling on reconsideration. In addition, any person who has an interest in the advice letter but who could submit neither a protest nor a request for reconsideration may request Commission review. Any such request for Commission review shall explain why the person is entitled to make the request. The request for Commission review shall be submitted to the Industry Division within 10 days after the issuance of the ruling, shall be served in accordance with the procedures applicable to service of a request for reconsideration, and shall set forth specifically the grounds on which the requester considers the ruling to be unlawful or erroneous. Upon receipt of a timely request for Commission review, the Industry Division will prepare and place on the Commission's meeting agenda a proposed resolution, and will serve it on the utility and on any person submitting a protest, a request for reconsideration, or a request for Commission review. Pending Commission action on the proposed resolution, the advice letter will take effect if it is approved under the ruling.

5.2 Application for Rehearing of Resolution

Pursuant to Sections 1731 to 1736 of the Public Utilities Code and Rules 85 to 86.7 of the Commission's Rules of Practice and Procedure, the utility submitting an advice letter, any person submitting a protest to the advice letter, and any other person who was a party to the resolution under these rules may apply for rehearing. The application for rehearing shall set forth specifically the grounds on which the applicant considers the resolution to be unlawful or erroneous.

The application for rehearing shall be submitted to the Commission's Docket Office, which will assign a docket number to the application, and to the appropriate Industry Division. On the same day that it is submitted, the application for rehearing shall be served on the same persons who are required to be served with the resolution under Rule 5.1.

6. Petition for Modification; Request for Extension

A Commission resolution issued under these rules is subject to petition for modification to the same extent and under the same procedures as provided, with respect to Commission decisions, by Rule 47 of the Commission's Rules of Practice and Procedure. However, the procedure for filing and serving a petition

for modification of such resolution is that provided for an application for rehearing under Rule 5.2.

For an extension of time to comply with a Commission resolution addressing an advice letter, the utility that submitted the advice letter shall send a written request to the Executive Director, with copies of the request sent concurrently to the appropriate Industry Division and to all persons on whom the resolution was served. The request, or facsimile of the request, must be received by the Executive Director at least three business days before the date of compliance set in the resolution. If the extension is granted, the utility shall promptly inform all persons on whom the resolution was served of the new date for compliance.

(END OF APPENDIX)